



# Oil and Gas Division

Lynn D. Helms - Director

Bruce E. Hicks - Assistant Director

**Department of Mineral Resources**

Lynn D. Helms - Director

**North Dakota Industrial Commission**

[www.oilgas.nd.gov](http://www.oilgas.nd.gov)

## **NOTICE TO SURFACE OWNERS CONCERNING THE RIGHT OF COMPENSATION FOR DAMAGES CAUSED BY OIL AND GAS OPERATIONS**

This letter is furnished to advise you of your rights and options as a surface owner or tenant under North Dakota law. This form as well as information disclosing the plan of operations contemplated by the mineral developer are intended to assist you in evaluating the effect such activity will have on the use of your property. You are responsible for negotiating the terms of any agreements. If you need advice or assistance in making a settlement, you should consult private counsel.

### **North Dakota Century Code Reference**

North Dakota Century Code (NDCC) Chapter 38-11.1 provides that all persons should be justly compensated for personal injury, property damage, and interference with the use of their property caused by oil and gas development.

Oil and gas development means the drilling, completion, production, or other operations of an oil and gas well which require entry upon the surface estate.

The law provides that surface owners and their tenants are entitled to compensation from the mineral developer for: 1) loss of agricultural production and income, 2) lost land value, 3) lost use and access, or 4) lost value of improvements caused by oil and gas drilling operations that directly affect the land where said operations occur.

### **Notice Requirements**

Except for geophysical exploration activities, which are governed by NDCC Chapter 38-08.1, you are entitled to written notice of any contemplated drilling operations at least twenty (20) days prior to the start of the operations unless notice requirements are waived by mutual agreement of both parties. If the mineral developer plans to begin drilling operations within twenty (20) days of the termination date of the mineral lease, the required notice may be given at any time prior to the start of drilling operations. This notice must be given to you as the record surface owner, at your address as shown by the records of the appropriate county register of deeds at the time the notice is given. This notice must sufficiently disclose the plan of work and operations so you are able to evaluate the effect of drilling operations on the use of your property. If a mineral developer fails to give notice as provided above, you may file a court action and may receive punitive as well as actual damages.

### **Hydrogen Sulfide**

You, or an adjacent landowner, may request the state department of health to inspect and monitor the well site on your land for the presence of hydrogen sulfide. If the presence of hydrogen sulfide is indicated the state department of health will issue appropriate orders to protect your health, welfare, and property.

## **Settlement Negotiations**

The mineral developer must make a written offer of settlement at the time the notice of contemplated drilling operations is given, unless both you and the mineral developer have agreed otherwise in writing. You may accept or reject any offer so made. Final agreement on the amount of compensation for damages does not have to be reached before the mineral developer begins drilling operations, and may be best negotiated after it is determined whether the well is commercial. If you reject the offers of the mineral developer you may bring a court action seeking proper compensation. If the amount of compensation awarded by the court is greater than that offered by the mineral developer you will be awarded reasonable attorney fees, court costs, and interest on the amount of compensation from the day drilling is commenced.

The amount of compensation for damages may be determined by any formula mutually agreeable between the surface owner and the mineral developer. Compensation for damages caused by drilling operations must be calculated as a single sum. When determining damages you must consider the period of time during which the loss will occur and you may elect to be paid the damages in annual installments over that period of time.

Any reservation or assignment of payment to someone other than the surface owner or tenant is prohibited. In the absence of an agreement between the surface owner and a tenant as to the division of compensation, the tenant is entitled to recover from the surface owner that portion of the payments attributable to the tenant's share of the damages.

## **Nuisance or Lack of Ordinary Care Claims**

Other parts of NDCC 38-11.1 provide that the mineral developer is responsible for all damages to any person (not just a surface owner) or property resulting from the lack of ordinary care by the mineral developer or from a nuisance caused by drilling operations. Any person seeking compensation must notify the mineral developer within two (2) years after the injury occurs or would be apparent to a reasonable person.

## **Underground Water Supplies**

NDCC Chapter 38-11.1 further provides protection of your surface or underground water supplies for domestic, livestock, irrigation, agricultural, industrial, or other beneficial use. If you own an interest in real property and obtain all or part of your water supply for any beneficial use from an underground source, you may have a claim against a mineral developer for disruption or diminution in water quality or quantity proximately caused by drilling operations. This law does not apply if water can reasonably be acquired under the changed conditions and the changed conditions are the result of the legal appropriation of water by the mineral developer.

You may have a claim for damages against the mineral developer provided that:

- 1) The water supply is disrupted or diminished in quality or quantity on real property you own within one-half (1/2) mile of where geophysical exploration activities are, or have been conducted, or within one (1) mile of an oil and gas well site, and
- 2) A certified water quality and quantity test has been performed within one (1) year preceding the start of drilling operations, and
- 3) A claim for damages is filed within six (6) years from the time damage was discovered or should have been reasonably discovered.

No tract of land is obligated to receive water contaminated by drilling operations on another tract of land. The owner has a claim against the mineral developer to recover damages resulting from natural drainage of such waters onto a tract of land.

**Other Remedies and Limitations**

The remedies provided by this law do not prohibit you from seeking other legal remedies.

This law does not apply to damages resulting from the operation, maintenance, or use of a motor vehicle upon a highway.

Dated this 3rd day of July, 2003.

/s/ Lynn D. Helms

Lynn D. Helms  
Director